

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CSX TRANSPORTATION, INC.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-00338 (EGS)
)	
WILLIAMS <i>et al.</i>)	
)	
Defendants.)	

**STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE
IN SUPPORT OF CSXT’S MOTION FOR
SUMMARY JUDGMENT AS TO THE TEMPORARY ACT**

1. The District of Columbia is a municipal corporation, established by Congress as authorized by the United States Constitution, Art. I, § 8, cl. 17, by Act of Feb. 21, 1871, ch. 62, § 1, 16 Stat. 419.¹
2. The Council of the District of Columbia (“D.C. Council”) passed the Terrorism Prevention in Hazardous Materials Transportation Temporary Act of 2005, Act 16-78 (the “Temporary Act”), on March 1, 2005.
3. Mayor Anthony A. Williams executed the Temporary Act on March 17, 2005. The Temporary Act went into effect on or about May 12, 2005.
4. The Temporary Act is attached hereto as Exhibit A.

¹ The District of Columbia did not dispute Paragraph 1. Defendants’ Opposition to Plaintiff’s Statement of Material Facts as to Which There Is No Genuine Issue (filed March 14, 2005) (“Defs. Fact Opp.”) at 2.

The Sierra Club did not dispute Paragraph 1. Statement of Material Facts as to Which There Is A Genuine Issue (filed March 14, 2005) (“Sierra Disp. Facts”) at 1.

5. CSX Transportation, Inc. (“CSXT”) is a major freight railroad that owns and operates over a rail network east of the Mississippi River of more than 21,000 route miles in 23 states, the District of Columbia and two Canadian provinces (from Illinois in the northwest to Massachusetts in the northeast to Florida in the southeast to Louisiana in the southwest). CSXT’s System Map is attached hereto as Exhibit B.²

6. It is lawful to transport hazardous materials, including the materials covered by the Temporary Act (the “Banned Materials”), in interstate commerce, provided the transporter complies with all applicable federal regulations. *See* 49 C.F.R. Parts 171-180 (federal regulations governing transport of hazardous materials).³

7. As a common carrier, CSXT has a statutory duty under present law to transport goods and materials, including the Banned Materials, upon reasonable request by a shipper. *See* 49 U.S.C. § 11101.⁴

8. A CSXT north-south main line (the “I-95” line) runs along the eastern seaboard from Florida to New York and New England and passes through the Capitol Exclusion Zone.⁵

9. A CSXT east-west main line (the “B&O” line) connecting the Mid-Atlantic region (southeastern Pennsylvania, Delaware, Maryland, and northern Virginia)

² Neither the District of Columbia nor Sierra Club disputed Paragraph 5. Defs. Fact Opp. at 2; Sierra Disp. Facts at 2.

³ Neither the District of Columbia nor Sierra Club disputed this statement (formerly Paragraph 9); both responded by asserting that it was a legal conclusion rather than a fact. Defs. Fact Opp. at 2; Sierra Disp. Facts at 2.

⁴ Neither the District of Columbia nor Sierra Club disputed this statement (formerly Paragraph 10); both responded by asserting that it was a legal conclusion rather than a fact. Defs. Fact Opp. at 2; Sierra Disp. Facts at 2.

⁵ Neither the District of Columbia nor Sierra Club disputed this statement (formerly Paragraph 11). Defs. Fact Opp. at 2; Sierra Disp. Facts at 2.

with points west as far as the Mississippi River also passes through the Capitol Exclusion Zone.⁶

10. CSXT has for decades regularly transported rail cars containing Banned Materials, including both loaded and unloaded cars, on its north-south and east-west main lines through the District of Columbia.⁷

11. CSXT does not originate or terminate any shipments of the Banned Materials in the District of Columbia. All shipments are interstate shipments passing through the District en route to destination.⁸

12. If CSXT is prohibited from transporting the Banned Materials through the District of Columbia, it would have to use alternative routes that would, on average, increase the route miles, transit time, number of times a car must be handled and the dwell time in yards for these cars (even if lines of other railroads could be used).⁹

⁶ Neither the District of Columbia nor Sierra Club disputed this statement (formerly Paragraph 12). Defs. Fact Opp. at 3; Sierra Disp. Facts at 2.

⁷ Neither the District of Columbia nor Sierra Club disputed this statement (formerly Paragraph 14). Defs. Fact Opp. at 3; Sierra Disp. Facts at 3.

⁸ The District of Columbia did not dispute this statement (formerly Paragraph 15); the District responded by asserting that the statement was immaterial. Defs. Fact Opp. at 3.

Sierra Club did not dispute this statement (formerly Paragraph 15). Sierra Disp. Facts at 3.

⁹ The District of Columbia disputed the prior version of this statement (formerly Paragraph 16) but only to the extent that the statement suggested the magnitude of the increase. Defs. Fact Opp. at 3.

Sierra Club also disputed the prior version of this statement (formerly Paragraph 16) on the ground that CSXT did not take into account rerouting over lines of other railroads. Sierra Disp. Facts at 3-4.

Although CSXT believes that the prior version of the statement was indisputable, CSXT has modified the statement to eliminate any assertion as to the magnitude of the increase. In the circumstances presented here, CSXT need not prove any particular level of interference with rail transportation in order to prevail on the claims presented in this motion.

13. A prohibition on transport of the Banned Materials through the District would detour rail cars of Banned Materials through other communities, increasing the number of rail cars of the Banned Materials in those communities and increasing the inherent risk of releases of hazardous materials in those communities.¹⁰

14. If and when other state and local jurisdictions enact similar legislation, the level of interference with interstate commerce in the Banned Materials would necessarily increase and could effectively eliminate all rail routing options for some or all shipments of hazardous materials within the scope of those laws (even if lines of other railroads could be used).¹¹

15. On May 2, 2002, the Research and Special Programs Administration (“RSPA”) in the Department of Transportation in docket number “HM-232” published proposed rules for security requirements for hazardous materials transporters. Notice,

¹⁰ Neither the District of Columbia nor Sierra Club disputed these facts. *See* Defs. Fact Opp. at 3-4 (regarding former Paragraphs 19 and 20); Sierra Disp. Facts at 5-6 (regarding former Paragraphs 19 and 20). The District of Columbia and Sierra Club asserted that there was a factual question as to the magnitude of the increased risk of terrorist attack in communities outside of the District of Columbia, but in the circumstances presented here, CSXT need not show that the District has increased the risk in other communities by any particular amount or in any particular manner (*e.g.*, accidental release versus terrorist attack) in order to prevail on the claims presented in this motion. CSXT need only show that the District has unilaterally increased the risk in other jurisdictions by an amount greater than zero, a fact that cannot be disputed.

¹¹ The District objected to a prior version of this statement (former Paragraph 24) as legal argument and/or immaterial fact, but did not dispute the substance of the statement. Defs. Fact Opp. at 4.

Sierra Club disputed the assertion contained in former Paragraph 24 that it would not take “many” local bans to “effectively eliminate all rail routing options” on the ground that “many” was vague and that CSXT did not take into account rerouting over lines of other railroads. Sierra Disp. Facts at 7-8.

However, the Court of Appeals concluded: “In assessing the burden, it is appropriate for us to consider the practical and cumulative impact were other States to enact legislation similar to the D.C. Act.” 406 F.3d at 673.

Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials, 67 Fed. Reg. 22028 (May 2, 2002).

16. On March 25, 2003, RSPA published its rule in docket number “HM-232.” Final Rule, Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials, 68 Fed. Reg. 14510 (March 25, 2003).

Respectfully submitted,

Dated: June 24, 2005

/s/ Mary Gabrielle Sprague

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